

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

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STATE OF NEW MEXICO, on the relation
The State Engineer,

Case No. 69cv-07941-BB

Plaintiff,

Rio Chama Stream System

v.

Section 1 (mainstream)

ROMAN ARAGON, et al,

Defendants.

To: The Honorable Bruce D. Black, District Judge

From: david ortiz, Plebian, Acequia de
Chamita

**Objection and Response to NOSC Doc. 10669: 1600 as the Priority
date of the Acequia de Chamita only**

Comes now, Plebian, david ortiz, Commissioner of the Acequia de Chamita, re-elected on 1/8/2012 by majority, no one against, known to the State of New Mexico, Interstate Stream Commission as subfile 267, map 22, tract 17, on Rio Chama Hydrographic Survey map 1959 to disagree and reject the offered date of 1600 as being "*earlier*" than the appropriate date for the Acequia de Chamita, and as a Parciante and Commissioner having Acequia Rights and water Rights on the Acequia de Chamita to respond and file these objections:

This Commissioner and Parciante (assigned by the State as subfile 267) request the Court to consider the Treaty of Guadalupe Hidalgo whether this Acequia and its Parciantes who maintain customs and practices and traditions (Before State, Treaty, or USA) are protected against priority administration by the State, or the establishments of Water Districts or Water

Masters or the application of any State regulations pertaining to priority administration or active water resource management.

I strongly object and disagree with the proposed priority date of 1600, not only for subfile 267, but all the subfiles (parciantes) of the Acequia de Chamita, this is where I have ditch rights and water rights, and have filed a Court issued Objection Form, giving me an opportunity to prove an *"earlier"* date. Doc. #'s, 10668, 10669, 10672.

It was and is a well known fact that *"many"* people recognized the Acequia de Chamita as that stated in the journal entry, (Hammond/Rey Onate the Colonizer of New Mexico) in which Don Juan de Onate writes, "On the 11th we began work on the irrigation ditch". I keep asking myself, "why didn't the expert historian at least try to defend that date", that he listed as 1598 for the Acequia de Chamita's "defensible date", in a 1992 Historical Abstracts of Acequias along the lower Rio Chama, prepared for Rio Chama Acequia Association on August 12, 1992, (Doc.9951 Exhibit C1-2-3-4), by Stanley Hordes. Why was the Abstract abandoned?

Whatever reason it may be, their lack of reasons or reasons of neglect, it cannot be denied that no effort was made to defend the establishment date of August 11, 1598 for the Acequia de Chamita.

Special Master Gabin in the Document dated Mar25, 1996, Pretrial Order on Mainstream Section, page 2, #4, writes, "The three acequias allege that their priority dates are at least 1680, and are in fact 1598-1600". Which *one was alleging* 1598?

Attorney Fred Waltz in Document dated Jun 14, 1996 Acequias Contentions, page 2, (2), "[C]ontinuity with the earliest Spanish settlement in New Mexico, that of the Onate Colony of 1598-1600 in Chamita". (Dr. Francis Levine)

There are a lot more of those *"many"* who knew of Acequia de Chamita's 1598 claim. I'll

save them for later.

The idea in mind is to displace fiction and put in its place a genuine and conservative narrative of facts. [Law and History in New Mexico: the Pueblo Rights Doctrine and Water Rights in Early Las Vegas, p4, When historians become expert witnesses in litigation, a new and specious kind of history can be created, described by one authority as "forensic history" or alternatively "lawyers history." (12.John Phillip Reid, "Law and History," 27 Loyola of Los Angeles Law Review 203) Forensic history arises when a lawyer asks a historian { *both paid I might add*} to find evidence either supporting or refuting a particular theory. This is forensic because, to paraphrase John Phillip Reid, the purpose of history is to learn what happened in the past, not support a particular outcome.]

Since I do not have all the 96 trial documents, only the A, E and EE exhibits on the (Defendants list, Doc.9546), I will concentrate on these 3 for my objection. A and E seem to be what was used to come up with a 1600 date and EE was capitulation. If there is more 1600 evidence than this entered in 1996, someone provide it and I will objectively look at it.

I object to the stipulation for the following reasons:

It seems that part of that recommendation is based on a stipulation agreed to by the historians. Stanley Hordes signed it and dated it on 6/9/95 and John Baxter signed it and dated it on 6/15/95 and the heading is dated on June 8, 1995 as a *STIPULATION AGREED TO BY STANLEY HORDES AND DR. JOHN BAXTER*. (my exhibit 2, theirs "A")

TO BEGIN OBJECTIONS: This following is either careless history or revisionist history or both.

Stipulation point #1, "In this endeavor he was accompanied by 10 Franciscan Friars and 129 citizen-soldiers and their families".

Even Mr. Hordes does not agree with his own numbers. Look at the numbers he uses in his book, "To the End of the Earth", page117."After interminable delays, the expedition finally departed from the mining town of Todos los Santos on January 21, 1598, with an estimated 460 people: 129 soldiers, an almost equal number of women and children, and about 200 others, including a mix of free and servant Indians, blacks, mestizos and mulattos".

Let us not forget the 7,000 animals. They were going to expand the Spanish Empire.

Stipulation point #2, "The Onate expedition arrived at present San Juan Pueblo on July 11, 1598".

(To be more accurate, it is the advance party that arrives on July 11, 1598), page 320, H/R and on page 323 Onate writes, "We waited for the carts until August 18 of the said year, [1598], when they arrived". What were they doing between August 11 and August 18? Digging the irrigation ditch with 1500 Indians. Why, where and for whom? Twenty or so years from now, no one will recognize "present San Juan Pueblo". There is no more San Juan Pueblo, it is now Okay Owingeh, both sides of the Rio Grande. No more Yugewingee or San Gabriel. As children of *nuestros pobladores Espanoles*, we are still here and the Acequia is still here.

Stipulation Point #3. "With the assistance of 1500 Pueblo Indians, Onate initiated a project to build an acequia on the east bank of the Rio Grande".

Does "an Acequia on the east bank" come from Onate's journal entry? Is this taken from Hammond/Rey, Onate, Colonizer of New Mexico, let's look at that writing. On page 17 in H/R, the Introduction, with no foot notes for back up, H/R writes,

"From Santo Domingo, the Spaniards explored the nearby pueblos, and then, on July 11, at the pueblo of Ohke, they founded their first headquarters or capital on the east bank of the Rio Grande and named it San Juan de los Caballeros. Here they remained for a [NOTICE] *few months*, [NOT FEW YEARS] but then they moved their camp to the pueblo of Yunque or Yugewinge, which they called San Gabriel, on the left bank of the Chama where it flows into the Rio Grande". Acequia on the east bank of the Rio Grande, didn't come from Introduction.

But WHERE do they come up with an acequia being built on the east bank of the Rio Grande?

Why would they establish it in the Ohke Pueblo and build an irrigation ditch for the Indians, when the "other beautiful pueblo" with 400 house Yugewinge was there all the time? Let's go

back "To the end of the earth", page 117, "[A]nd continued upstream until they reached the confluence of the Rio Grande and Rio Chama. Onate established his capital in this location, called San Gabriel del Yunque, just across the Rio Grande from the pueblo of San Juan".

Did he change his **opinion**? Remember 460 +- people and 7000 animal and 63 carts of stuff.

Onate's Journal only mentions one acequia, why put it in the Indian Pueblo? It was for the

Spanish as the recorded witnesses testify. Who brought the seeds, plows and hoes, the draft mules and oxen for agriculture? Who was settling and establishing a Colony, a town and the seat of the Spanish Empire?)

Where is the proof for stipulation #4, the notes, and the facts of Spanish settlers "moving in 1600" to a new settlement across the Rio Grande to a location directly west of the pueblo of San Juan, two years later and digging the 2nd Acequia? If there was a partially abandoned Pueblo, why wouldn't they have established there from the beginning, July 11, 1598? There is no evidence for any move, especially in 1600.

This is an accurate statement of #5, if it was #3, and where there is no east bank. It is just in the wrong order. [6, 7, 8, and 9 do not pertain to], "On the 11th we began the irrigation ditch".

There is no proof in the Colonizers writings in the H/R book, or in Villagra, or in Torquemada of an Acequia being dug on the "East" bank or another Acequia being dug on the other side of the river, in 1600 or a move from the east bank to the west bank in 1600.

Where is the August 11, 1598 Acequia?

I object to the historians report for the following reasons:

June 24, 1996 Irrigation at the confluence of the Rio Grande and Rio Chama: The Acequias de Chamita, Salazar and Hernandez, 1600-1680 (Exh. E: Doc.9546)

Page 1 & 2. **1541.** "Under the command of Captain Francisco de Barrionuevo, the party stopped at Yunque, the future site of San Gabriel and the area served by the Acequia de Chamita. The Chronicler of the expedition described "two very beautiful pueblos which were on opposite sides of the river....(with) abundant provisions," referring to Yunque, on the west bank, and San Juan, on the east bank". The Historian writes, page 3, "In the winter of 1590, Castano's party arrived at San Juan Pueblo, (*forgot to put present*), finding it covered with snow so deep that a horse could no longer travel through it".

The historian starts out well, identifying "two very beautiful pueblos, which were on

opposite sides of the river” and two different groups of Spaniards (50 years apart) coming to the place where Don Juan comes (8 years later) to establish the seat of Spanish rule.

It could have been called Yunque by the Spanish because it is a Spanish word, [There is a San Juan, Rio Grande and Yunque in Puerto Rico] (Revised Velazquez-Spanish English Dictionary, page 665, YUNQUE: (yoon-kay), m. 1. Anvil. 2. Constancy, fortitude. Estar al yunque, to bear up under the frowns of fortune; to bear impertinent or abusive language.), however it did not have the name San Juan, because

that is the name Onate gave it in 1598. Most probably this is where Onate intended to come as he wrote to the (King on December 16, 1595, H/R page 70),

“Sir; For many years I have had reports of how important it would be for the service of your majesty to discover and pacify the provinces of New Mexico, and having made a careful study to find out all that could be learned about them and wishing to spend my life and estate in the service of your majesty,....”. And also in a (Report of Viceroy Velasco to his Successor), “This expedition to New Mexico has been under consideration for a long time, and his majesty has expressed his desire that it be started” (H/R, page 76, no date) Onate was under

contract, did he know where he was going to settle and establish the Royal Seat of Government?

But the issue at hand is, where does he establish his Acequia? In the Indian Pueblo of Ohke, on the east bank? (Exh.E. page 3), “Exactly one month later, work began on an acequia on the east bank of the Rio Grande, the labor provided by some 1,500 Pueblo Indians. (Note 3. H/R, Onate, Colonizer of New Mexico, 1595-1628, pp322-323). Here is what is written in the above book, that he is quoting, “On the 11th we began work on the irrigation ditch for the city of our father, Saint Francis.... Some 1500 barbarian Indians gathered on this day and helped us with our work”. Strange, Onate didn’t call them Caballeros. More important, I do not read, “east bank” of the Rio Grande anywhere.

Page 3 & 4. “By the fall of 1600, demographic pressures had forced Onate to move his capital from San Juan to the west bank of the Rio Grande, which also constituted the north bank of the Rio Chama. The settlement of Yuque-Yunque took on the new name of San Gabriel

de Yunque, and formed the basis for the community that would ultimately be known as Chamita. The New Colony used an acequia from the Rio Chama for the irrigation of crops.

Seventeenth-Century Franciscan historian Juan de Torquemada chronicled this important

development: San Gabriel..... is situated between two rivers, and the waters of the smaller of the two irrigates wheat, barley, corn, and other crops that they plant in gardens. (Note 4. Torquemada's documents). [Not that I don't trust the historian but let's keep him honest".]

[Page 672, Libro Quinto. Cap. XXXVII. Relaciones de las cosas, que han ido Sucediendo, en las Provincias del Nuevo Mexico, despues que fueron a poblarlas nuestros Espanoles, de que fue por General Don Juan de Onate. Despachados Don Juan de Onate, y los Suios, para la Jornada del Nuevo Mexico, siguieron su camino, en demanda de aquellas Tierras, y en llegando a aquellas partes, tomaron posesion, por el Rei, en ellas, y el Pueblo donde Don Juan de Onate, Governador, y Capitan General de esta entrada, hico asiento, y puso su Real, se llama San Gabriel, el qual Sitio esta en trienta y siete grados de altura al Norte, y esta situado entre dos Rios, y con las aguas del menor de los dos, se riegan los Trigos, Cevada y maiz, y las demas cosas, que se siembran en las Huertas, que son, Coles, Cebollas, y otras Hortalicas, que se dan mui bien. El otro Rio es grande, que llaman del Norte, que es de mucho, y mui buen Pescado"].[Page 678 Libro Quinto. Cap. XXXX (Pardon me, I cannot read, its blurred)fin a las Relaciones de el Nuevo Mexico, y se dicen en particular las cosas tocantes a sus Moradores. "Ya hemos dicho, que el lugar principal donde el Governador Don Juan de Onate hico su Poblacon, y sento su Real, le puso por Nombre San Gabriel, y que esta situado en trienta y siete Grados de altura, y que tiene por uanda dos Rios, uno de los quales es de menos Agua, que el otro. Este chico riega todas las Sementeras de Trigo, y Cebada, y Maiz, que ay de Riego, y todas las demas cosas, que se siembran en Huertas, porque se dan en aquella Tierra Coles, Cebollas, Lechugas, y Rabanos, y la demas verdura menuda que en esta: danse muchos, y buenos Melones, y Sandias.

El otro Rio es mui grande, llamanle de el Norte, dase en elmucho Pescado, y de cinco leguas, mas arriba del Real, buenas Truchas (y muchas de a dos palmos) mas abaxo de el Rael, se toma mucho Pescado, comeson Bagres,, Matalotes, Mojaras, y Mogotes; y en los Esteros de este Rio, pescan Anguilas, que pasan de una vara.

Todo lo que se siembra de Castilla, y el Maiz, y Chile de aca, da bueno, y mucho".

I know what it says. Your Honor can find an independent translator.

I find it strange, don't you, that he or any of the other 460 colonizers did not see the "other beautiful pueblo" just across the river right away. So what was the demographic pressure? Did the Indians finally get tired of all the sleeping bags spread all over their floors,

sharing the kitchens and bathrooms and 7000 animals on the front lawn? *You take other beautiful pueblo across river, espanole, this year of 1600. 2 years enough. We have ditch, you go dig your own ditch.*

I object to the Special Masters Recommendation because its based on opinions of historians as shown above.

ORDER. BRUCE D. BLACK . CHIEF UNITED STATES DISTRICT JUDGE

The Honorable Judge allows me to make my "clarifications" in my NOSC, as per 10537, Ortiz may raise his "clarifications" if and when he objects to the order to show cause. I object.

If your Honor will bear with me, not being a Lawyer or knowing rules or regulations or court etiquette.

I object to the State claiming all subfiles were served in 1996, when I know they were not. They finally had to admit 5 fell through the cracks. How many more? I would like to see the list. I think it is my responsibility as commissioner to inform my parciantes of issues that affect our Acequia and their water and rights. And protect those rights, because they are also mine.

Doc. 10537 David Ortiz' Objection (Doc.10163 page 2), When I advised Andrew Valdez, Successor in interest to his father, A B Valdez, deceased commissioner, (subfile 246, map 20, tract 12), that the Court had tried to mail documents and had the wrong address and it was being returned "undeliverable", that they sent a change of address to the court after having gone to the State Engineers Office and filed a Declaration of change of ownership in his and his mother's name and have not received those undeliverable documents yet. I object to this error not being corrected. I did my part, Andrew Valdez did his part and now we wait on the State.

I object to not having access to the list, I guess the Court calls it the certificate of service, of those individuals who were served with a NOSC to see if they agreed with the 1714 date the

State offered to Chamita in the last Century. Who was served? Did they receive it? Did they sign it over to the Lawyer? Did the Lawyer represent them and keep them informed? Did anybody see the 1996 Court documents saying, 1600? Where is the proof of service?

I object because the parcientes have not been offered the new date, 1600 for Chamita. 14 years have gone by and a lot of new people have come in and no one, save for a few I have informed, know what is going on. How can one make an intelligent decision without all the evidence for both 1600 and August 11, 1598? Now I have been denied evidence, unless I go to Albuquerque and pay .50 a copy for each page. Who is supposed to present the evidence to the defendants? Has 1600 been offered to the individual subfiles or do lawyers and commissioners accept it for the Community Acequia, without even looking at the 1600 evidence? [I asked one of the commissioners if he had seen the 1600 evidence and he said no, he was just going by what the expert historians said] Does N.M. Stat. Ann. 72-4-17 (all water rights claimants of record and "all other claimants, so far as they can be ascertained, with reasonable diligence, shall be made parties") apply? Who has right to irrigate out of the Acequia? We don't allow anyone to draw water out of the Acequia without permission. We don't sell water. I have said this before and I will say it again "I know all the Parcientes on the Acequia de Chamita, their addresses and how many acres they irrigate". We manage our water. Without mentioning names, (although I would like to), we had a parciente who had a big water tanker parked on the ditch bank taking water out of the Acequia a few years back, I went and asked him who gave him permission? He told me who and I told him and the individual taking the water, who was with a highway contractor, that the water in this Acequia was for irrigation of its lands, not for highway construction. Go and negotiate with the State and take it out of the river, I told him. They left and did not come back.

I know this adjudication is a mess for everyone concerned. Courts, Lawyers, brokers and historians shouldn't be involved in apportioning water, and establishing priorities, especially when the Acequia is pre-1912, 1907, 1848, and 1776. Our own tax dollars are being used to take our water. When you start buying and selling water as merchandise, the rich buy it and the poor sell it, the rich get richer and the poor get poorer. And the State just takes it, and the ditch goes away. (Santa Fe, New Mexican, 1/4/2012, The next 100 years)

When will all the parties of the Acequia de Chamita be offered the "new" date? Does the State believe the Lawyer and the Commissioners can accept it for the 104 subfiles? Doc.10002, 2/17/11 p2, If those two Commissioners and certain subfiles want 1600, give it to them. But give the Acequia and those that want August 11, 1598, that Priority date. Priorities does not change the amount of water we can put in the Acequia or we can use on our land. We fill the ditch and any unused water goes back to the Rio Grande. The State is trying to be the water casino. If you are going to give us a priority date, make sure it's our establishment date as you claim in your Rules and Regulations. The State also writes on p 2, "the official and consistent position of the Acequia de Chamita has been to argue for a priority date of 1600 for all water rights under this ditch".[ibid] An Acequia, arguing for a 1600 date, for its water rights? Can the two Commissioners change the by-laws, accept 1600 for all water rights, without even notifying the Parciantes, the Acequia? All the parciantes voted and accepted the by laws, by majority, (no one offered a 1600 date, including the commissioners who signed them), with the Aug.11, 1598 establishment date, in 2003.

The Lawyer accepted (Doc.9556 filed 1/7/10), [No certificate of Service to his client] the Special Masters Report (Doc.9546, filed 12/16/2009) without notifying the Acequia, so how can the Lawyer and the Commissioners appeal (Doc.9958) the Special Masters Report, if he has

already motioned to adopt? The State makes reference to the Affidavits dated 9/22/2010, by the other two Commissioners, so I will ask this; #4 on the affidavit, "In my opinion we have been kept informed of that trial and all relevant events subsequent to that trial, including the opinions of our historians, Dr. Stanley Hordes, and our attorney, Fred Waltz". So I'll ask this dumb question, Wasn't the acceptance (Doc. 9556 filed 1/7/10) of the Special Masters Recommendation "relevant"? Or the Special Masters Recommendation, (Doc.9546, 12/16/2009), relevant? Why didn't I get a copy of his affidavit to sign? (Doc.9951, p 2) On 1/26/2010 the Legal Counsel showed up at a meeting called by the Acequia Commissioners, apologized and handed us a copy of Doc. 9546, (NO EVIDENCE OR EXHIBITS) which the R A County Lawyer had sent us on 1/11/10. The two Commissioners did not know the Acequia Lawyer had already accepted it on 1/7/2010, until February 20, 2010. After all he was just looking out for our best interests, he didn't want us to wind up with 1714. Did the Lawyer ask them to read the affidavit before they signed it? Is there such a thing as a "President" of an Acequia? If the Commissioners were aware of the offered 1600 date in 1996, (I asked one of the commissioners if he had seen the 1600 evidence and he said no, but he was going by what the expert historians said), why continue signing documents like Acequia by-laws, filed with the State and R A County, that claim August 11, 1598 after 1996, like in 2004? [#7], [I]s that what was agreed by Hordes/Baxter, the date of the first settlement of the Chamita area as 1600? What about the ACEQUIA?

Did the Historian and lawyer offer the parciantes any proving evidence at the March 16, 2010 Acequia meeting, for that 1600 date? Or at any time? The Meeting was recorded, (Doc.9951 p3) which they tried to stop. *I asked the expert historian about his historical abstract, Acequia de Chamita, 1598.* He didn't remember it. The lawyer jumped in and said it was just a

draft. I pressed the historian and he said, **I can change my opinion**. Is this what this is all about, **opinions**? Is that what these two historians were hired to do, **give opinions**? *I asked the Lawyer, where do you say the 1598 Acequia is?* He said, I don't know. Nobody knows. *Really?* Where did his historian say it was in his 96 report? What did he accept on 1/7/2010? And what did he write in the Jicarita News, October, 2004? (Doc.9951 EXH. D1)

To his credit the lawyer had already addressed the Indian nation status and aboriginal rights on an Acequia established on August 11, 1598. Doc.8680 But it wasn't **relevant** enough to inform the other commissioners. Now they are not tribes any more, they are **nation** drawing water out of the Acequia, **Within a Nation** and this Nation (us & USA) is paying that nations USA lawyers.

As the Court knows and should know, many filed Objections to 1600 and some withdrew those Objections. Why? Is the Court even curious? We filed Doc. 9546 on 3/31/2010. We affectionately call it "*the Bible*". (260 pages of evidence and exhibits.) I made 45 sets x 260 @ .05 a copy. And then more sets. Now we just E-mail it. We tried to "sell" it to the members for what it cost to copy, about \$11, which included mailing. The vast majority were glad to pay it. We wanted our parcientes informed. At the meeting members were told that we could wind up with 1714 if they tried to fight it or didn't accept 1600. (EX. D2) So some withdrew. Were they presented with the 1600 evidence? Ask them. I asked them why they had withdrawn and what was the answer I got? "We could wind up with 1714" and what does 2 years matter. Is 1600 for 3 Acequias and 1 **nation**, the better priority? Is August 11, 1598 for 1 Acequia a better priority? Who made the withdrawal form, that they signed and sent to the court, stating that they were misinformed. Who misinformed who?

The Lawyer says in Doc.9958, p 2, "The Acequia de Chamita was fully informed of the

opinions of its expert historian, and the priority date of 1600 that was presented to the Special Master. In fact, the Acequia, through two of its then commissioners, Juan D. Archuleta and Richard M. Salazar, presented evidence at the trial to support a priority date of 1600". (Doc.9958 affidavit of Alex Sisneros, and affidavit of Richard M. Salazar,).

When I went to Juan Archuleta's home to take him his ball cap (bought 12/13/07) with "Acequia de Chamita, est.1598", he thanked me and said as long as Eloy Garcia and I were on the Acequia he knew we would take care of Acequia business.

I was given all the Court documents that Juan Archuleta and A. B. Valdez had in their possession, there was no stipulation or historian report or evidence Juan or A B had seen 1600 in their possession.

It all comes down to this Your Honor; the ball is in your Court. Thanks for letting me dribble a while. The Woman holds the scales to weigh the evidence. One side says "1600", and seem to be the majority, and the other side says "August 11, 1598", so far, a rejected minority. But people are not on the scale, the evidence is, **Let the evidence speak. We can have this back and forth for another 2 years (or you can throw me out) and I am piling up more evidence, if need be, or you can look at this objection and Doc. 9546, filed 3/31/2010, "the Bible". It outweighs 1600 right now. After all if we are given a priority of 1600, it won't matter as far as filling the Acequia with water, **history will be changed**. As long as a few of us are alive we will continue to say, we were established on August 11, 1598 and be able to back it with evidence. But whether we have a 1600 or 1598 priority, I know, and **You know** that if there is that little water needing a priority call, it will not come in the ditch. It will go to the thirsty little fish down stream so they can take a bath or the Indian Nation.**

Chances are Your Honor, if we are offered 1598, some idiot will object and want 1600.

The real solution is not in adjudication by men, dividing scarce water, it's found in that book people place their hand on and swear to tell the truth. (I don't know if it's used any more, since we have become a bunch of liars, bible or no bible). [ISAIAH 22:9, 10, 11]. This has deep significance, but I'll use it only in the principle as it applies to this issue. The government has made all kinds of dams to collect and store water and we have dug ditches to water our fields and crops and pipe ditches, to supply our people in the cities, and yet we do not have enough. And we make rules, and move and sell rights without water and pass laws to protect the springs where the waters are born and we don't consider that the waters have been running from the mountains to the seas for thousands of years and yet the sea has not filled up or flooded over. The real problem is as is stated in vs.11, "*you have not looked to the maker thereof, neither had respect unto Him that fashioned it long ago*".

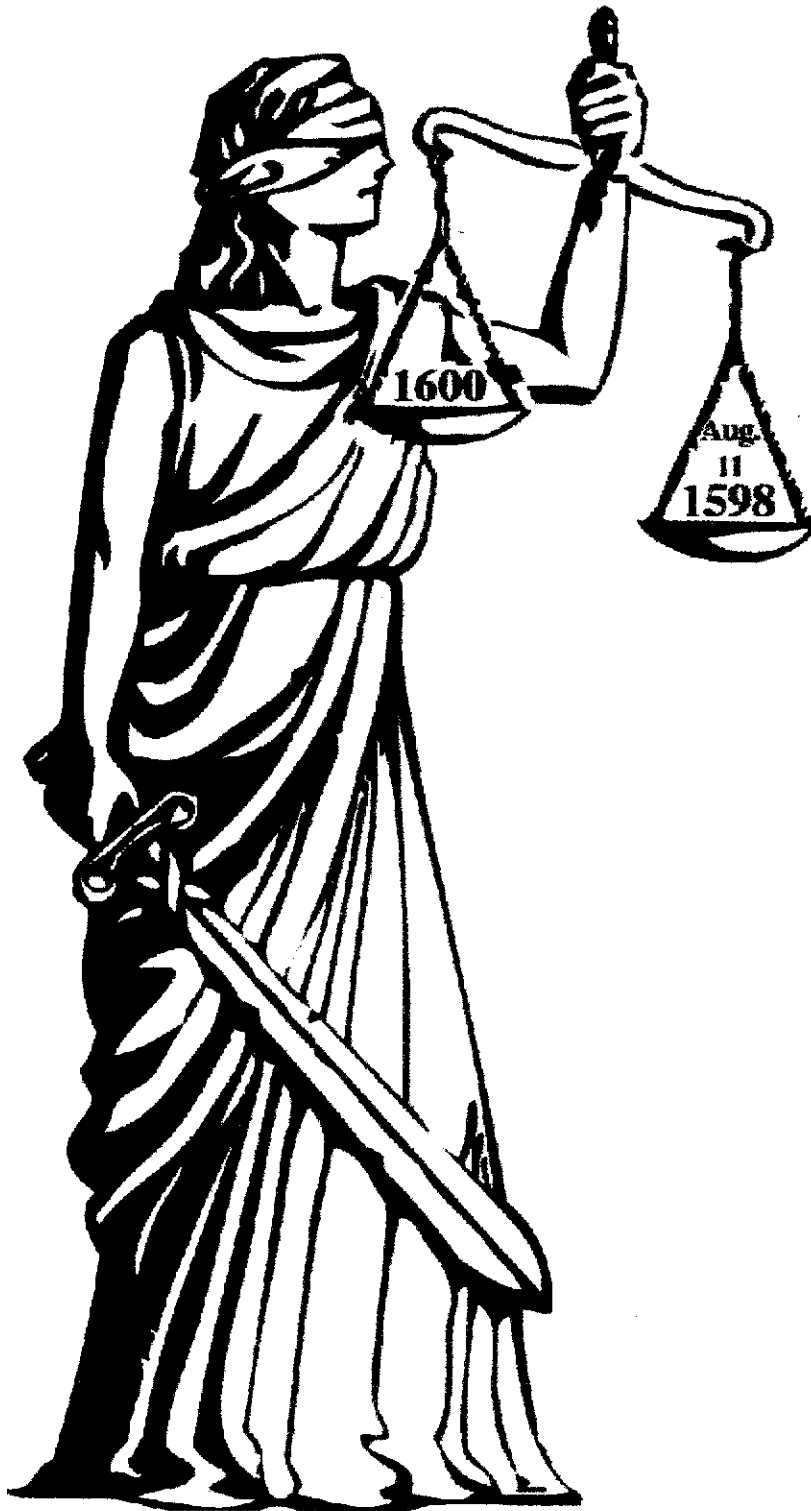
As Onate wrote to the King, April 7, 1599, **These reports give the exact Truth.**

Wherefore this poor ignorant plebian, david ortiz, Commissioner of the Acequia de Chamita, Parciante with rights in the ditch and water rights to irrigate my pastures, flowers and garden, thanks to Don Juan de Onate and my in-laws and out-laws who came with him, request the Court to reject the 1600 date because of the above-stated objections.

I object to 1600 for the Acequia de Chamita, and this subfile and all the subfiles of this Acequia, and request of the Court to allow me to present evidence for August 11, 1598.

Case: 6:69-cv-07941-BB

Respectfully Submitted by Defendant David Ortiz,



David Ortiz
(Signature of Defendant)

David Ortiz, Commissioner/Treasurer

DAVID ORTIZ
(Printed name of Defendant)

P.O. Box 1082
(Street address or P.O. Box)

SAN JUAN PUEBLO, NM
(City, State and Zip Code) 87566

Tract 17

Map 22

Subfile 267

Exhibit **1** p1

HISTORICAL ABSTRACTS OF ACEQUIAS ALONG THE LOWER RIO CHAMA

Prepared for:

Río Chama Acequia Association
Medanales, New Mexico

Prepared by:

Stanley M. Hordes, Ph.D.
HMS Associates
P.O. Box 4543
Santa Fe, New Mexico 87502

August 21, 1992

CHAMITA ACEQUIA

Ex 1 p2

Date	Document	Abstract
1598	Torquemada Cap. XXXX	Juan de Torquemada, in his 1612 Monarquía Indiana (published in 1723), cites Oñate's settlement at San Gabriel as located between the banks of two rivers, one having less water than the other. "The smaller one [Río Chama] irrigates all the plantings of wheat, and barley and corn, and all the other items that are cultivated in gardens . . ."
1701	I-926	Petition and grant to Diego Trujillo; boundaries extend from confluence of RG to angostura; no occupation cited
1707	I-824	Bartolome Sánchez petitions for lands at Puesto de Zhama; boundaries: N-un pueblo quemado antiguo; S-Pueblo de Santa Clara de la otra banda del Río del Norte; E-Mesa de San Juan; W-el mismo lindero de Santa Clara; no occupation cited [APPEARS TO ENCOMPASS BOTH SIDES OF RIO CHAMA]
1710	I-1020	Juan de Urribarí, Bartolomé Lovato, Joseph Madrid, Sevastian Duran and Simon de Córdoba petition for land at Yunque; boundaries: W&S-corrales de piedra and las lomas; N-Pueblo de Chama; E-Río Grande; grant approved, but no act of possession cited
1711	I-827	Bartolome Sánchez petitions for revalidation of grant at Río Arriva de Chama; indicates that he has not yet occupied lands earlier granted
1712	I-1020	Diego Márquez, Bartolomé Lovato, Matías Madrid, Joseph Madrid, Andrés Gonzales, Sebastian Duran, Tomas de Bejarano, Ysabel de Serna (widow of Blas Lobato), Simon de Córdoba, and Xptóbal de Castro petition for land at la Villa de Yunque; Juan Páez Hurtado indicates that Santa Cruz cannot afford to lose so many settlers;
1714	I-926	DT dies; widow asks that grant be assigned to Salvador de Santiesteban and Nicolas Valverde, her close relatives; put in possession of 4 fanegas de sembradura de mais; boundaries: N-matoral de poñíl, y una loma parda que tiene al pie un ser-rito pequeño que blanquea . . .; S-Río Chama; E-Río del Norte; W-mojoneras . . .

Ex 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO on the
relation of the State Engineer,

Plaintiff,

v.

RAMON ARAGON, et al.,

Defendants.

95 NOV 17 AM 1:48

No. CIV 7941 SC

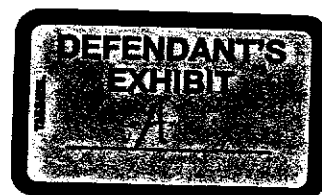
RIO CHAMA
ADJUDICATION SUIT

Section I (Mainstream)

ORDER ADOPTING STIPULATION

THIS MATTER having come before the Special Master and the Court upon the Joint Motion of the State Engineer, Plaintiff, and three (3) community acequias, Acequia de Chamita, Acequia de los Salazares, and Acequia de Hernandez, Defendants, to adopt the Stipulation of the court-appointed expert, John Baxter and the acequias' expert, Dr. Stanley Hordes as to facts relevant to the priority dates of the aforesaid acequias; the Court being duly advised in the premises, finds that the motion is well taken and should be granted.

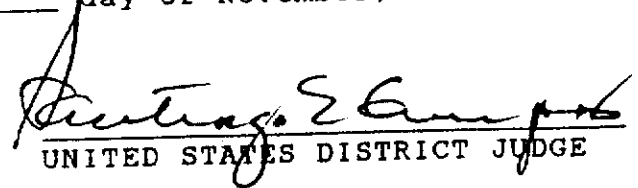
IT IS THEREFORE HEREBY ORDERED, ADJUDGED, AND DECREED, that the Court adopts the Stipulation of facts relevant to the priority dates of the Acequia de Chamita, Acequia de los Salazares, and Acequia de Hernandez. The Stipulation is hereinafter attached and made a part hereof as Exhibit "A".



EX2 P2

FURTHER IT IS ORDERED that the said Stipulation is binding only upon the Plaintiff, State Engineer, and the aforesaid three (3) acequias.

Done by the Court this _____ day of November, 1995.


UNITED STATES DISTRICT JUDGE

Approved:

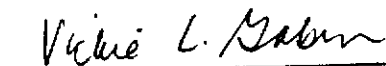

Special Master

EXHIBIT A

STIPULATION AGREED TO BY DR. STANLEY HORDS AND DR. JOHN BAXTER

JUNE 8, 1995

EX273

1. In 1598 Juan de Oñate led a large expedition out of San Bartolomé in present Chihuahua to establish a permanent settlement in New Mexico. In this endeavor he was accompanied by 10 Franciscan friars and 129 citizen-soldiers and their families.
2. The Oñate expedition arrived at present San Juan Pueblo on July 11, 1598.
3. With the assistance of 1,500 Pueblo Indians, Oñate initiated a project to build an acequia on the east bank of the Río Grande.
4. In 1600 Spanish settlers moved to a new settlement across the Río Grande to a location directly west of the Pueblo of San Juan, north of the Río Chama, at the partially abandoned Pueblo of Yuque-Yunque, which the Spanish authorities named, "San Gabriel".
5. The Spanish settlers promptly established an irrigation system at San Gabriel, constructing an acequia taken from the waters of the Río Chama. This acequia irrigated wheat, barley, corn and other garden crops. San Gabriel was located in the area now known as Chamita.
6. About 1608, some Spanish settlers left San Gabriel and relocated at the present site of Santa Fe. *State No. 0 as abandoned*
7. The Pueblo Revolt of 1680 resulted in the destruction of virtually all of the locally-generated records in New Mexico from the founding of Santa Fe to 1680. It is thus impossible to determine how many Spanish settlers remained at San Gabriel after 1608, or the nature and extent of Spanish settlement at San Gabriel through the 17th Century based on contemporary documentation.
8. In 1714 Antonio de Salazar received a grant of land in an area that is irrigated today by the Salazar acequia on the south bank of the Río Chama and west bank of the Río Grande, near their confluence.
9. In his petition to Governor Juan Ignacio Flores Mogollón, Salazar indicated that his great-grandfather, Alonso Martín Barba, had owned these lands prior to the Pueblo Revolt of 1680. Salazar also requested the same access to farmlands that Martín Barba has used.

Stanley Hords 6/9/95

John Baxter 6/15/95

EXHIBIT "A"

EX 3 MONARQUIA INDIANA

POR
FRAY JUAN DE TORQUEMADA



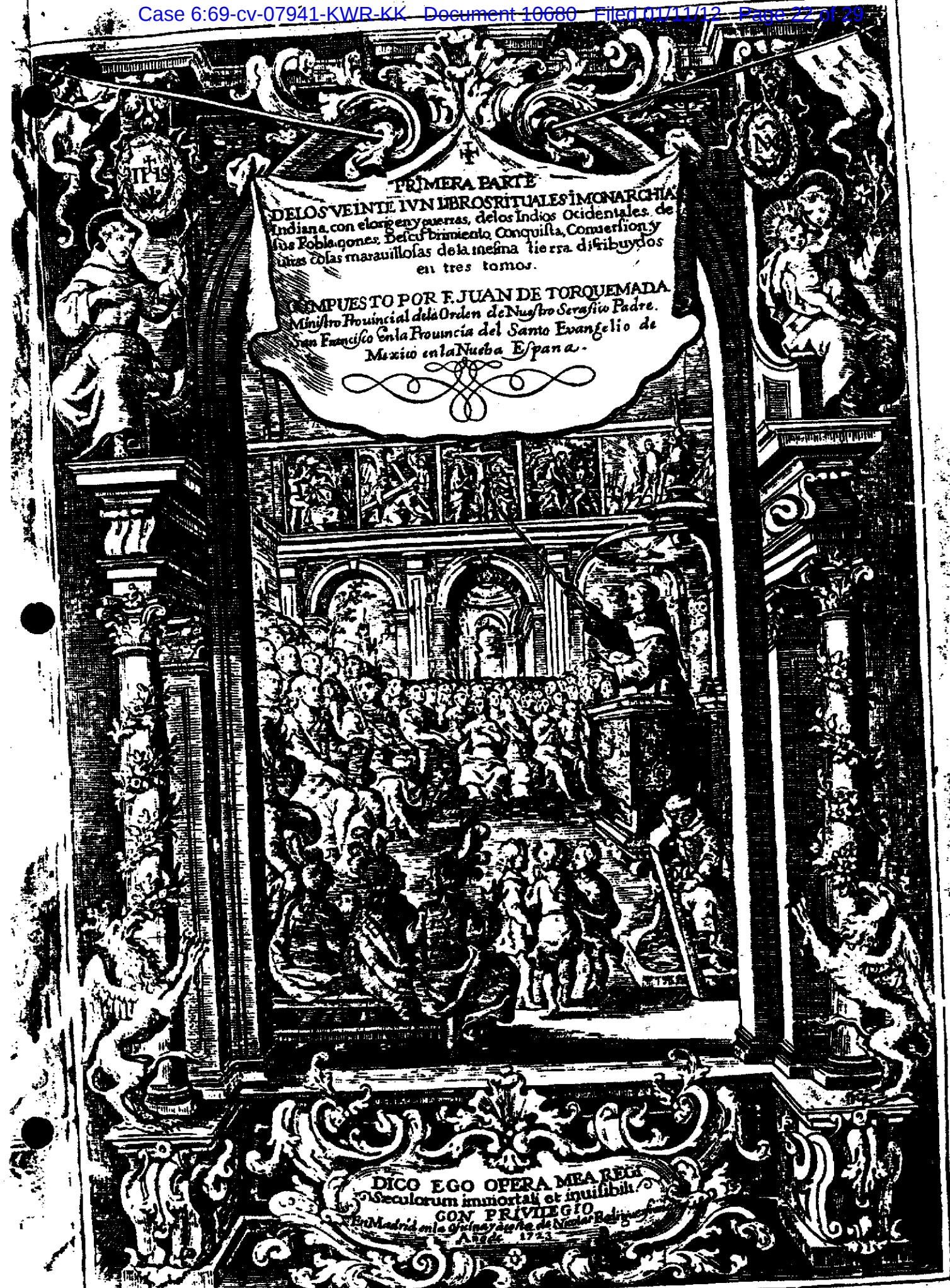
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TERCERA EDICION

EDITORIAL
SALVADOR CHAVEZ HAYHOE
México D.F.
1943



PRIMERA PARTE

DE LOS VEINTE Y UN LIBROS RITUALES IMONARCHIA
Indiana, con el origen y guerras, de los Indios Occidentales, de
sus Poblaciones, de su nacimiento, Conquista, Conversion y
otras cosas maravillosas de la misma tierra distribuydos
en tres tomos.

COMPUESTO POR F. JUAN DE TORQUEMADA
Ministro Provincial de la Orden de Nuestro Seraphico Padre,
San Francisco en la Provincia del Santo Evangelio de
Mexico en la Nueva España.

DICO EGO OPERA MEA REGI
Seculorum immortal et inuisibili
CON PRIVILEGIO

En Madrid en la Oficina y Venta de Nicolas Rodriguez
Año de 1723

la avia embiado el Conde para estas averiguaciones à Don Lope de Ulloa, y allà se negociò de manera, que la Jornada se prosiguiò, y fue nombrado Frai Alonso Martinez por nuevo Comisario, y llevò consigo otros Religiosos, y pasaron todos, hasta llegar à las Poblaciones, que llaman Nuevo Mexico, y alli asentaron Real, y oi Dia permanece; y de lo que ha ido sucediendo, se dirà en sus lugares.

1602.

En el Año de 1602. por el Mes de Noviembre, viniendo los Navios de la China, como suelen, por aquel tiempo, vieron los que venian en la Nao, Almiranta (llamado San Antonio de Padua) vna señal en el Cielo, que los causò espanto, y admiracion, la qual se romiò por Testimonio, con fee de Escrivano, el qual tengo en mi poder, y dice así: En el Año de 1602. à quatro de Noviembre de el dicho Año, à las ocho y media de la Noche, viniendo navegando de las Islas Filipinas, en demanda de la Costa de Nueva-España, 38. grados y medio, docientas Leguas de Tierra; estando para tomar la Guardia, la buelta de el Norte, apareció vna grandísima claridad en el Cielo, que totalmente parecian Campos, que se quemaban; porque toda su color era tan bermeja, que parecia vna propia sangre, y esto de el Oriente para arriba; no subió tanto, que pudiese cubrir la Estrella de el Norte, y en el circuito, que tomaba aquella color roja, à trechos estaban hechas vnas barras, de Norte à Sur, y su color de estas era, entre blanco, y amarillo: Y citando toda la Gente de la Nao, mirando con grandísima atencion, vieron, se vino à dividir por la mitad de el Norte, adonde vino à quedar el Cielo mui blanco, y la maior parte que dividió, fue corriendo à la parte de Leste, y esto fue derramandose de lo que quedó, à la parte de el Oeste, y se vino à consumir, quedando antes que se ensolviera, como vn Tizon en el Aire, y esto duraria por tiempo de hora y media. De lo qual doi fee, y verdadero Testimonio, Yo Sebastian Solano, Escrivano de la dicha Nao, por su Magestad, que pasó así, y lo vi, en Testimonio de lo qual, hice mi firma acostumbrada. Sebastian Solano. Què aya querido significar esta prodigiola señal, no lo sé; pero tambien sabemos, que son demostraciones estas, y otras co-

mo ellas, de cosas que suelen acrecer, como son Muertes, Guerras y Hambreras, quiera Dios, que esta no sea indicio de nada de esto, sino solamente figura, que aya querido Dios mostrar, para solo que le alabemos.

CAP. XXXVII. Relaciones de las cosas, que han ido sucediendo, en las Provincias del Nuevo Mexico, despues que fueron à poblarlas nuestros Españoles, de que fue por General Don Juan de Oñate.



ESPACHADOS

Don Juan de Oñate, y los Suos, para la Jornada del Nuevo Mexico, siguieron su camino, en demanda de aquellas Tierras, y en llegando à aque-

llas parres, tomaron posesion, por el Rei, en ellas, y el Pueblo donde Don Juan de Oñate, Governador, y Capitan General de esta Entrada, hizo asiento, y puso su Real, se llama San Gabriel, el qual Sitio està en treinta y siete grados de altura al Norte, y està situado entre dos Rios, y con las Aguas del menor de los dos, se riegan los Trigos, Cevada, y Maiz, y las demás cosas, que se siembran en las Huertas, que son, Coles, Cebollas, y otras Hortalizas, que se dãn mui bien. El otro Rio es grande, que llaman del Norte, que es de mucho, y mui buen Pescado.

En este Lugar se situaron, y asentaron su Real los Castellanos, y de aqui comenzaron à granjear las voluntades de otros Convecinos, y yà por fuerça, o yà de grado, traxeron à su obediencia todos aquellos Pueblos, y en algunos de ellos se repartieron los Religiosos, que avian ido à esta Conversion, aunque no luego comenzaron à traer a la Fe las Gentes de ellos; porque como no se entendian los vnos à los otros, no podian ser persuadidos al intento de los Religiosos, solo les daban à entender los Españoles, que avian de tributarles, y servirles; y quando no se querian dár por entendidos los Indios, se lo daban à entender por fuerça. Así comenzó esta Poblacion, y se conservò, à mal de su pesar de los Indios, que aunque à los principios los re-

Nov 4
8:30

fados de los trabajos, y calamidades, que padecian.

Fueron seis Religiosos, y por Comisario de ellos, y de los que allá estaban, el Padre Frai Francisco de Escobar, Hombre de Aprobacion, de Vida, y Letras, aunque por causas que concurrieron, le fue la Comision al Padre Frai Francisco de Velasco, que allá estaba por vn Año; y mandato al nuevo Comisario, que de acá iba, que así se cumpliese, y con Gente que fue de socorro para lo que se ofreciese, así de Presidios, como de Entradas, quedó todo cumplido, y el Virrei, y la Orden quieros de la inquietud, que les causaba el desconcierto, y mal avio de aquella Entrada.

Tocadas ya aquellas Gentes de la Mano de Dios poderosa, començaron à Bautizarle, y tenian ya el Año pasado de mil seiscientos y ocho Años, mas de ocho mil Animas, y con este contento, así de los Ministros Eclesiasticos, como de lo Secular, escribieron al Virrei, y à la Orden, y vinieron Religiosos con Raçon de todo lo que padecía, y à pedir ajuda, así en lo Temporal, como en lo Espiritual; à lo qual se acudió liberalmente; y para lo Espiritual, fueron ocho, ò nueve Religiosos, que ajudasen en tan Apostolica obra, y el Padre Frai Alonso Peinado por Comisario de ellos, y de los que allá están, por aver renunciado este Oficio el Padre Frai Francisco de Escobar, que hasta entonces lo avia sido, con mucha Aprobacion. El Virrei los proveió, como era justo, y nombró por Capitan de la Gente, que fue de queyo, al mismo que iba por Governador, en nombre de el Rei; porque ya su Magestad lo ha tomado à su cargo, y por suia la Conquista; y así entendemos, tendrá mucha medra aquella conversion, porque para su Remedio tenia necesidad de vn brazo tan poderoso, como es el de el Rey Nuestro Señor.



C A P. XXXX

Da fin à las Relaciones de el Reyno de Mexico, y se dicen en particular las cosas tocantes à sus Moradores.



A hemos dicho, que el Lugar principal donde el Governador Don Juan de Oñate hizo su Poblacion, y le puso el Nombre San Gabriel, que está situado entreinta y siete Grados de altura, y que tiene por vándados Rios, vno de los quales es de menos Agua, que el otro. Este chico riega todas las Sementeras de Trigo, y Maiz, y Maiz, que ay de Riego, y todas las demás cosas, que se siembran en Huertas, porque se dan en aquella Tierra Coles, Cebollas, Lechugas, y Rabanos, y la demás verdura menuda, que en esta: danse muchos, y buenos Melones; y Sandias.

El otro Rio es mui grande, y llamante de el Norte, dase en el mucho Pescado, y de cinco Leguas, mas arriba de el Real, buenas Truchas (y muchas de à dos palmos) mas abaxo de el Real, se toma mucho Pescado, como son Bagres, Matalotes, Mojarras, y Molgotes; y en los Esteros de este Rio, se pescan Anguilas, que pasan de à vara.

Todo lo que se siembra de Castilla, y el Maiz, y Chile de acá, se dà bueno, y mucho. Criaban las Indias muchas Gallinas de la Tierra, y mucha Caça de grandes Venados, Cabras Montesas, y muchas Liebres, y Conejos: Dase bien el Ganado de Castilla, así menor, como maior, y à tres leguas, y los Puercos, y Gallinas, en quebradas, y Riberas de Rios, y Arroios, mucha Vba, y Rosas, y Errios, y por los Campos mucho Lino. Estas cosas se dan, y nacen sin sembrarlas, ni labrarlas. Ai en partes vnas Ciruelas mui buenas, y Pisones, maiores que los de esta Tierra. En cada de Vacas de Gibola, aunque las mas cercanas están cincuenta leguas, cuya carne es mui sabrosa, y es sebo es tan bueno, que se comen crudos, bocados: la Manteca es cosa mui delicada, y de lindo sabor.

Luego que las Maçorcas de Maiz llegan à estar en leche, cogen muchas de ellas.

ellas; y amasadas; e ellas estendida; mui ra de hojaldrado, e fruta de Sarrén; y amasada, hacen vn manera, que vna se guisan al Sol; y para comer; y quita ya quasi quaxa de ellas, y tostadas ponen al Sol; y las, y secas, las mas Maçorcas, que les dexan sazonar guardadas en Maiz mor, y para sembrar esto hacen, por miençan mui temprano. Mieses à mucho; y ali tienen este comida, para goçar que se le tiene toda buenos Frisoles; y y sabrosas; hacen de por la mañana Atozina Gachas, ò Pomen frio todo el Sal; ni lo cuecen como estos otros. Tambien hacen Ta como los de por adinarario Pan.

La Tierra es muela, y nieva mucho vierno, y el Verar España. Para los fríos ay mucha Leña; no, y otros gener debaxo de la Tierra invierno: Y estan que ha acedido elagera; y en el ciendo Misa (aunque veces) los Rios de mui grueso; es largo el invierno corto; pero en la Castilla la Vieja.

Las Gentes Indios, como India de buena estatura agestados. Son de to, y alegres; (que serán ciento Pueblos) es de la partida de lo que Desde que maban sus Madres ce po, porque se frio; y todo el

Copy

ExD2

1/19/2010

Acequia de Chamita

P O Box 930
San Juan Pueblo,
New Mexico 87566

Fred Vigil
Rio Chama Acequia Association

Dear Fred,

No thanks to you and by a chance of fate, we received a copy of case 69cv07941-BB, Special Masters report on priorities for 3 Acequias, dated and filed 12/16/2009. It came to our attention on 1/10/2010 and was sent to us on 1/11/2010.

We made it "clear" to you that we wanted to be on top of this situation and not read about the decision in the legal notices of the newspaper.

Here is what we are doing:

We are sending a letter to both Vickie Gabin and Judge Black that the decision is put on hold until we are able to receive all the exhibits and review the documents to see how she could come up with a 1600 date for the 3 Acequias and to separate Acequia de Chamita from the other 2 Acequias.

We do not appreciate being treated as your orphans.

Acequia de Chamita Commissioners

Alex Sisneros
Richard Salazar
David Ortiz

Rio de Chama Acequias Association
Box 687
Medanales, New Mexico 87548

ExD2

January 22, 2010

Dear Commissioners from Acequias de Chamita

Enclosed is a copy of the Special Master Vickie Gabin decision on the Priority Date for your acequia. The Special Master decided in your favor and ruled that the evidence establishes a Priority Date of 1600 for your acequia.

*ms. l. l. The
States and
Salazar &
Hernandez*

The Special Master decided against the State of New Mexico and did not accept their argument that your acequia should have a Priority Date of 1714.

This decision is not final yet because the Federal District Court Judge needs to enter an order adopting the Special Master decision. Hopefully this will happen soon.

*NOT IF WE
CAN HELP IT.*

Thank you for all your support during the trial. The Special Master decision is an important victory for your acequia.

detail
Sincerely,

Fred Vigil
Fred Vigil
RCAA

FRED J. WALTZ
Attorney at Law
214 B Kit Carson Road
Taos, New Mexico 87571
Phone/Fax: (575) 758-0407

EXD2

January 26, 2010

Chamita Acequia Association
c/o David Ortiz

Dear Mr. Ortiz:

I am responding in this letter to your recent questions about the Special Master's decision that the priority date of the Acequia de Chamita is 1600. I am aware of the commonly held belief and historical custom that the Chamita area was first settled and irrigated when Onate arrived with a large group of settlers, soldiers, and religious in 1598. Upon a close examination of the historical record that is only partly true. The historical documents show that Onate did arrive with his large party in 1598, but that he settled at San Juan Pueblo on the east side of the Rio Grande. There he had constructed an acequia with the labor of 1500 Native Americans. The new Spanish settlement then moved by 1600 to a site across the Rio Grande to the abandoned pueblo of Yunque Yunque near the site of present day Chamita. These historical facts are contained in documents cited by and relied upon by both the Acequias expert, Dr. Stan Hordes and the expert relied upon by the State of New Mexico, Dr. John Baxter. A copy of Dr. Hordes' report is attached. Because they both agreed upon this initial history, they signed a Stipulation which was presented to the Court. A copy of the Stipulation is enclosed.

At the trial the Acequias relied upon the expert report of Dr. Hordes to establish a priority date of 1600. The State however tried to prove that the Chamita area was later abandoned by about 1610 when the capital was moved to Santa Fe. There are documents which suggest this abandonment. However we were able to convince the Special Master that the area was not completely abandoned, that some settlers remained.

Of course there was the Pueblo Revolt of 1680 when all Spanish settlers were forced to leave New Mexico. The State has tried to argue that the priority date for the Chamita Ditch should be 1714 when the area was resettled after the Pueblo Revolt.

The Special Master accepted the Acequias' evidence and arguments and ruled in their favor that the priority date for the Chamita Ditch is 1600, not 1714 as argued by the State. This is a tremendous victory for the Chamita Acequia and community of Chamita.

I understand that there is an argument that the Special Master's decision should be appealed to argue for an even earlier priority date of 1598. That would be a terrible mistake because the evidence does not support that priority date for the Chamita Acequia. Based upon the historical record, there is no chance of successfully appealing the decision to make the priority date earlier than 1600. In fact, if the Acequia did appeal, you would be forfeiting the 1600 date and risk the Court deciding instead in favor of the

Ex D2

State's suggested priority date of 1714. This would be a tragic consequence for the Chamita Acequia and community of Chamita.

Sincerely,



Fred J. Walsh
Attorney at Law

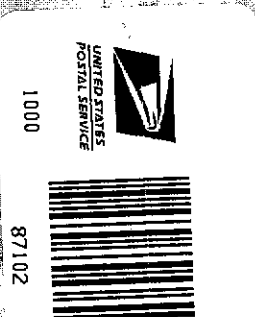
FJW/co

Enclosures

Shirley Carter
PO Box 1082
San Juan Pueblo,
NM 87566

RECEIVED
At Albuquerque NM
JAN 11 2012
MATTHEW J. DYKMAN
CLERK

United States
District Court
333 Lemay Blvd NW
Suite 270
Albuquerque NM
87102



first class